92-754

No. _____

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

Thomas R. Angel and Loretta C. Angel,
Petitioners/Appellants

vs.

Judge Charles W. Froehlich, Jr.
Respondent/Appellee

Petition for Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

Petition for Writ of Certiorari
Brief for Petitioners

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QUESTIONS PRESENTED

I Are petitioners denied a full and fair hearing when oral argument are denied at all levels and when Motion to Correct distorted Record are finally denied as Moot despite Courts own previous Orders to the Contrary?

II Since 42 USCS 1983 does not itself contain limitation periods, shouldn't Federal Courts follow that state law which specifically prohibits the application of Statutes of limitations and/or laches to judgments void for a lack of jurisdiction, or can such specific law be circumvented by the more general law regarding laches and/or Statute of limitations as provided under the Doctrine of Res Judicata?

III Under the Doctrine of Res Judicata, how is the issue of defendant's falsification of public record, i.e. reporter's transcript, substantially identical to the issue of rendering state judgment/settlement N 8598 void for a lack of defendant's jurisdiction to make the terms of settlement in know opposition to petitioners wishes, and in the presence of opposition counsel while petitioners were not in Court?

All parties appear in the caption of the case in the United States Supreme Court.

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OPINIONS BELOW

On August 10, 1992, the Ninth Circuit Court of Appeal denied petitioners' Petition for rehearing (Copy attached hereto as Appendix "A").

On July 31, 1992, the Ninth Circuit Court of Appeal denied petitioners' Emergency motion to file supplement to petition for rehearing (Copy attached hereto as Appendix "B").

On July 17, 1992, the Ninth Circuit Court of Appeal denied petitioners' Motion to Reverse the Order (of District Court) denying Ex Parte Motion to Correct Record on Appeal as Moot (Copy attached hereto as Appendix "C").

On June 12, 1992, Ninth Circuit Court of Appeal issued a memorandum denying petitioners' appeal as res judicata (Copy attached hereto as Appendix "D").

On May 11, 1992, the ninth Circuit Court of appeal denied petitioners' request for oral arguments (Copy attached hereto as Appendix "E").

On November 27, 1991, the Ninth Circuit Court of Appeal issued Order stating in relevant part, "Appellee's motion to submit the appeal without oral argument, and any related filings shall be referred for disposition to the panel that considers the merits of the case" (Copy attached hereto as Appendix "F")

On October 29, 1991, the Ninth Circuit Court of Appeal issued Order stating in relevant part, "The Court is also in receipt of appellant's "Motion to Reverse the Order Denying Ex Parte Motion to Correct Record on Appeal...." The motion is construed as a motion to correct the record under Fed. R. App. P. 10(e). Construed as such, the motion and any

related filings shall be referred for disposition to the panel that considers the merits of the case" (Copy attached hereto as Appendix "G").

On October 7, 1991, the District Court issued an Order denying Ex Parte Motion to Correct Record on Appeal (Copy attached hereto as Appendix "H").

On September 10, 1991, the Ninth Circuit Court of Appeal issued an Order directing petitioner's to file a motion to correct the record in the district court (Copy attached hereto as Appendix "I").

On April 29, 1991, the District Court filed an Order granting defendant's Motion to Dismiss herein (Copy attached hereto as Appendix "J").

JURISDICTION

On October 29, 1991, the Ninth Circuit Court of Appeal issued Order stating in relevant part, "The Court is also in receipt of appellant's "Motion to Reverse the Order Denying Ex Parte Motion to Correct Record on Appeal...." The motion is construed as a motion to correct the record under Fed. R. App. P. 10(e). Construed as such, the motion and any related filings shall be referred for disposition to the panel that considers the merits of the case." (Appendix "G")

On June 12, 1992, Ninth Circuit Court of Appeal issued a memorandum denying petitioners' appeal as Res Judicata. (Appendix "D")

On July 17, 1992, the Ninth Circuit Court of Appeal denied petitioners Motion to Reverse the Order denying Ex Parte

Motion to Correct Record on Appeal as Moot. (Appendix "C")

On July 31, 1992, the Ninth Circuit Court of Appeal denied petitioners Emergency motion to file supplement to petition for rehearing (Appendix "B").

On August 10, 1992, the Ninth Circuit Court of Appeal denied petitioners' Petition for rehearing. (Appendix "A")

Petitioners have been denied the right to contract in Settlement, and the right to access state and federal law regarding judgment void for a lack of jurisdiction, and the right to consideration of a correct record herein on appeal, and the right to a full and fair hearing, all, violating the right to due process and equal protection provided for under the provisions of the Fourteenth Amendment of the United States Constitution. The jurisdiction of this court is invoked

under 42 USCS 1983.

CONSTITUTIONAL and STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment of the Constitution of the United States, Section I in relevant part provides:

> "No State shall deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

42 USCS 1983 provides:

> "Every person who, under color of any statute, ordinance, regulation, custom or usuage, of any state or territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." Also provides "that suits under 42

> USCS 1983 are excepted from prohibitions of Anti-Injunctive Statute 28 USCS 2283 where there is a clear violation of due process under the Fourteenth Amendment of the United States Constitution."

California Civil Code, Sections 1550 and 1565 provide in relevant part:

> "Consent is essential to the existence of a contract, and it must be free, mutual, and communicated by each party to the other."

California Code of Civil Procedure Section 473 provides in relevant part:

> "The Court may, ... on motion of either party after notice to the other party, set aside any void judgment or order."

STATEMENT OF CASE

For purposes of accurate reference to the district courts record, the title of documents filed herein by petitioners were re-titled, without notice to petitioners, by the clerk on the list of "Clerk's docket of proceedings as follows:

1) Clerks docket of proceedings, Number 11, was titled by petitioners as "Answer to Motion to Dismiss" and retitled by the clerk as "Notice of filing Answer to Motion to Dismiss."

2) Clerk's docket of proceedings, Number 12, was titled by petitioners as "Opposition to defendant's reply re: Motion to Dismiss" and retitled by the clerk as "Notice of filing Opposition to defendant's reply re: Motion to Dismiss.""

Federal complaint herein involves 3 related state lawsuits. The original

lawsuit for specific performance of a contract to transfer unimproved real property, Case No. N 8598, was meritrious and in fact involved a written contract for the purchase of real property (Clerk's record, Complaint, pages 4 and 5 and Exhibit IV thereto). Case No. N 8598 ended in a settlement wherein defendant Judge Frochlich made the terms in know opposition to Angels specific direction and such action was taken in the presence of opposition counsel while Angels were not in Court. Pursuant to such settlement, Angels have been denied appeal of causes 1 and 2 and have never been permitted to litigate causes 3, 4 and 5 in any court.

Angels second state lawsuit, Case No. N14705, was a complaint to set aside judgment rendered due to extrinsic fraud

and was specifically plead as follows: "Defendants herein obtrained the aforementioned judgment (N 8598) through extrinsic fraud in that they bought plaintiffs attorney Kevin Midlam ..." (Clerk's record, Complaint, page 3, first paragraph). Lawsuit N 14705 ended against Angels via Summary Judgment. Nowhere in such lawsuit do Angels raise any jurisdictional issues.

The third state lawsuit was a complaint against Angels for Malicious Prosecution as to prior state case No. N 14705, Case No. N 23298, ending in $154,331.13 judgment on verdict against Angels. This judgment with accummulating interest now amounts to over $300,000.00.

Appellant's prior Federal Case No. 86-2270 S(CM) was filed November 17, 1986, wherein the issue presented was set forth

as follows:

> "This matter involves the falsification of public record, i.e., the Court Reporter's transcript of hearing and trials. Four San Diego North County Superior Court Judges, Charles W. Froehlich Jr., F.V. Lopardo, Gilbert Nares and Don Martinson, directed the falsification of Court Record in a substantial and detrimental way against Angels." (Clerks record, Request for Judicial Notice in support of defendant's Motion to Dismiss, Tab 1, Complaint for Temporary restraining Order and preliminary and permanent Injunction, Civil No. '862270 S(CM), page 1, lines 25 thru 28, and page 2, lines 1 & 2)

Nowhere in such complaint is the issue of any judgment being void for a lack of jurisdiction presented.

The Order Granting Motion to Dismiss of prior Federal Case No. 86-2270 S(CM) was filed November 17, 1986, wherein such Order sets forth as follows:

> "It is ordered that the motions to dismiss of defendants be, and hereby are, granted on the

> grounds that no claim has been stated by operation of the Anti-Injunctive Act, 28 United States Code Section 2283 and that this Court has no Jurisdiction over the claim in that plaintiffs have not alleged a constitutional basis for their claim." (Clerks record, Request for Judicial Notice in support of defendant's Motion to Dismiss, Tab 2)

Federal District Court declined to take jurisdiction of Case No. 86-2270 S(CM).

Such decision was appealed as C.A. No. 87-5965, wherein Ninth Circuit states in decision as follows:

> "Judicial immunity serves to insulate the defendants from this suit. As pointed out in Ashelman v Pope, 793 F 2d 1072, 1078 (9th Cir. 1986) (en banc), this court must not "construe the immunity doctrines too narrowly by focusing on underlying actions instead of looking to the ultimate acts." So considered the "ultimate acts" as alleged by appellants neither show nor can show "that the judges' ultimate actions were not judicial or beyond the scope of the court's jurisdiction..." To the contrary, all are well within the contours of the "paradigmatic

> judicial acts involved in resolving disputes between parties who have invoked the jurisdiction of a court." (Clerks record, Request for Judicial Notice in support of defendant's Motion to Dismiss, Tab 5, unpublished Memorandum opinion C.A. No. 87-5965, page 2, second paragraph)

The issue of State Judgment N 8598 being void for a lack of jurisdiction was originally raised on Motion in State Case No. N 8598 in the year 1988. Such motion was denied and appealed as D 008095. In appeal brief D 008095, Angels state as follows:

> "While in the presence of counsel for both plaintiffs and defendants, Judge Froehlich made the terms of settlement after being specifically informed by Midlam, in the presence of Renn's counsel, that such terms were specifically against Angels wishes. This, standing alone, rendered judgment N 8598 void." (Clerk's record, opposition to defendants Reply Re: Motion to Dismiss, Exhibit I, page 6, mid-third paragraph and prefaced by the clerk as Notice of filing)

The court of appeal invoked laches as a means of avoiding a determination of the merits of such issue as follows:

> "If, as they allege in their present briefs, they have never raised the issue of lack of jurisdiction, having provided no excuse for failing to do so, they have not acted with diligence after discovery of the facts. For this reason alone, the trial court did not err in denying equitable relief." (Clerk's record, opposition to amended memorandum of points & authorities to dismiss, Exhibit III, second page, second paragraph, third sentence)

Angels petitioned the California Supreme Court for a hearing on Appeal D008095. Angels were denied such hearing.

Subsequently, and in appellant's related State Case No. N 23298, Appeal No. D 010755 was filed thereto on October 13, 1989, wherein the issue presented is that since "Judgment N 23298 is the result of judgment N 8598, judgment N 23298 is

equally void for a lack of jurisdiction"

and is set forth as follows":

> "Since case N 23298 was brought as to case N 14705 (a lawsuit to set aside judgment N 8598), and since N 8598 is void under the law, legal grounds exist for the setting aside of judgment N 8598. There can be no cause for Malicious prosecution where legal grounds exist for the action. Paskle v Williams (1931) 214 Cal 482, 487, 6 P2d 505." (Clerk's record, Opposition to defendant's Reply Re: Motion to Dismiss, Exhibit II, page 15, Section III and prefaced by the clerk as Notice of filing)

Decision in Appeal No. D 010755 was

filed on September 10, 1990 wherein

decision is based as follows:

> "The motion which is the subject of this appeal is identical to the motion brought in Case No. N8598, which was the subject of the 1989 appeal (D008095). The same issues are raised in this appeal as were raised in that appeal and involve the same parties regarding the same underlying judgment."

And Further:

> "If ever there was a case in which res judicata should be applied to attempt, however, futilely, to prevent repetitive litigation between the same parties on the same issues, this is it." (Clerk's Record, Reply Memorandum of Points and Authorities in support of Motion to Dismiss, Request for Judicial Notice, page 6 & 7)

The State Court of Appeals in Appeal No. D 010755 invoked the doctrine of Res Judicata pursuant to it's prior invoking of laches in Appeal D 008095. Angels were denied a hearing on their petition to the California Supreme Court. Angels did not appeal to the United States Supreme Court.

Pursuant to the following documentary evidence, Judgment/Settlement N 8598 is void for a lack of jurisdiction.

On September 22, 1980, Angels filed a statement of disqualification of trial Judge Froehlich wherein the substantive facts were set forth as follows: While

Angels were not present in Court, trial Judge Froehlich made the terms of settlement in case N8598 despite Angels attorney having informed the court in the presence of opposition counsel that such terms were in direct oopposition to Angels specific instruction and such facts were supported by documented evidence, i.e., sworn testimony. In trial Judge Froehlich's answer to such statement of disqualification, he declares under penalty of perjury that he had no knowledge or recollection of the factual materal set forth in the statement sufficient to permit him to admit or deny same. (Clerk's record, Complaint, Exhibits I & II)

The Clerk of the District Court herein informed petitioner Loretta Angel via phone that their oral arguments had been

taken off Calendar. Several days later petitioner Loretta Angel inquired via phone as to when their case would be put back on Calendar for hearing and was informed by the clerk that their case had been determined without Oral Arguments. (Appendix "K")

When petitioners received a copy of "Clerk's docket of proceedings" herein from the district court, they discovered that some documents were not listed, some of petitioners filed and conformed documents had been re-titled with no prior notice to petitioners, and the filing date had been changed on one of petitioner's filings.

Petitioners pursued a correction of such record via correspondence to both District and Appeals' Court, via a motion to District Court (Appendix "H"), via a

motion to Appeals Court (Appendix "G", "F" & "C"), via a petition for rehearing, and an Emergency motion to file supplement to petition for rehearing.

The Ninth Circuit Court of Appeals, after issuing Orders stating petitioners Motion to Correct Record on appeal would be considered and determined and after rendering decision on appeal herein, issued an Order stating petitioners Motion to Correct Record on Appeal is Moot.

Petitioners efforts to obtain consideration and determination of their Motion to Correct Record on Appeal are evidenced as follows:

1) A copy of Declaration of Thomas R. Angel and Loretta C. Angel in Opposition to Appellee's Motion that Appeal be Submitted without Oral Arguments is attached hereto as Appendix "K" and

provides in relevant part at page 2, third paragraph as follows:

> "The facts and legal arguments are not adequately presented in the record. (Appellants Motion to Correct Record on Appeal) The record as set forth by the District Court is incorrect and misleading."

2) A copy of correspondence from petitioner Loretta Angel to the clerk of the Appeals Court dated March 10, 1992 is attached hereto as Appendix "L" and states in relevant part as follows:

> "Would you please inform me as to possibly when there might be a determination of the appeal and related motions herein?"

3) A copy of Response to Court's Inquiry re: Oral Arguments is attached hereto as Appendix "M" and provides in relevant part in last paragraph as follows:

> "Plaintiffs still hold such objections as set forth in their answer to defendants motion for

submission without oral arguments, and incorporate such objections herein as to the courts current inquiry re: Oral Arguments."

4) A copy of page 2 of petitioner's Petition for Rehearing is attached hereto as Appendix "N" and provides in relevant part at paragraph 2 as follows:

"Additionally, the Order of this Court filed October 29, 1991 and setting forth as follows ["The Court is also in receipt of Appellant's "Motion to Reverse the Order Denying Ex Parte Motion to Correct the record on Appeal...." The Motion is construed as a motion to correct the record under Fed. R. App. P. 10(e). Construed as such the motion and any related filings shall be referred for disposition to the panel that considers the merits of the case"] has not been considered or ruled upon.

5) A copy of petitioners Emergency Motion is attached hereto as Appendix "O" and provides in relevant part, bottom page 2, as follows:

"Appellants could not have

> responed earlier to the Judges' Order of July 17, 1992, and having made the subject Ex Parte Motion to Correct Record, etc. a part of their petition for rehearing, and having a fundamental right to respond to Orders of this Court, and due to the time passed already and prior to the current Order, and because irreparable damage could be done if complete consideration of all issues presented via appellants petition for rehearing is not permitted via appellant's supplement thereto, Appellants request that their Supplement to Petition for Rehearing, etc. be accepted and filed.

Lastly, petitioners have not filed 7 lawsuits to set aside State Court Judgment/Settlement N 8598, and in fact have filed only one such lawsuit in State Court.

ARGUMENT

I It is a fundamental principle of due process that every litigant receive a full and fair hearing. When district court prohibited oral arguments herein, Angels were prohibited a full and fair hearing, and thereto were denied due process and equal protection of the law as provided for in the Fourteenth Amendment of the United States Constitution.

This wrong is compounded by the fact that record herein on appeal is misleading and inaccurate. As set forth in statement of case hereto, and incorporated hereunder by reference, petitioners pursued with diligence and good faith a correction of the record on appeal herein.

On October 29, 1991, the Court of Appeals filed an Order stating in relevant

part as follows:

> "The Court is also in receipt of appellant's "Motion to Reverse the Order Denying Ex Parte Motion to Correct Record on Appeal...." The motion is construed as a motion to correct the record under Fed. R. App. P. 10(e). Construed as such, the motion and any related filings shall be referred for disposition to the panel that considers the merits of the case." (Appendix "G")

On November 27, 1991, the Court of Appeals filed an Order stating in relevant part as follows:

> "Appellee's motion to submit the appeal without oral arguments, and any related filings shall be referred for disposition to the panel that considers the merits of the case." (Appendix "F")

Petitioner's Opposition to Appellee's Motion that Appeal be Submitted without Oral Arguments states in relevant part as follows:

> "The facts and legal arguments are not adequately presented in the record. (Appellants Motion to Correct Record on Appeal) The

> record as set forth by the District Court is incorrect and misleading." (Appendix "K")

On March 10, 1992, petitioner Loretta Angel wrote the clerk of the court of appeals as follows:

> "Would you please inform me as to possibly when there might be a determination of the appeal and related Motions herein?" (Appendix "L")

On April 10, 1992, petitioners responded to the Courts Inquiry re: Oral Arguments in relevant part as follows:

> "Plaintiffs still hold such objections as set forth in their answer to defendants motion for submission without oral arguments, and incorporate such objections herein as to the Courts current inquiry re: Oral Arguments." (Appendix "M")

On May 11, 1992, the Court of Appeals issued an Order stating as follows:

> "Appellants' request for oral argument is Denied. This case shall stand submitted on the briefs and record, without oral argument, on June 3, 1992, in

Pasadena." (Appendix "E")

Petitioners relied on the Orders of the Court of Appeal wherein was stated that the Motion to Correct Record would be determined on the merits by the same panel deciding the Motion re: Oral Arguments and the merits of Appeal herein.

The Court of Appeal could not have over looked petitioners Motion to Correct Record since it was made a part of each opposition regarding the Motion and inquiry on Oral Arguments, which was determined.

On June 12, 1992, however, the Court of Appeal issued a memorandum of decision without determination on petitioners Motion to Correct Record. (Appendix "D")

In Petition for Rehearing, petitioners specifically addressed the need for determination on their Motion to Correct

Record. (Appendix "N")

On July 17, 1992, the Court of Appeal issued an Order stating:

> "The Angels "Motion to Reverse the Order Denying Ex Parte Motion to Correct Record on Appeal, "which we treat as a motion to correct the record under Fed. R. App. P. 10(e), is denied as moot, inasmuch as their action is barred by the doctrine of Res Judicata." (Appendix "C")

When the record is inaccurate and misleading, how can the Court of Appeals be certain that petitioners action is barred by the doctrine of Res Judicata? An accurate record must be inherently necessary to any valid decision. The October 29, 1991, Order of the Court of Appeals requires a determination on the merits. Such Order doesn't say that the court will decide whether or not to decide, but rather says that such Motion will be decided.

Aren't Courts required to comply with their own orders, and can't litigants rely on court orders?

In an effort to address the Appeals Court Order of July 17, 1992, declaring petitioners Motion to Correct Record Moot, in their petition for rehearing, petitioners filed an Emergency Motion requesting that they be permitted to file a Supplement to their Petition for rehearing. (Appendix "D")

On July 31, 1992, the Court of Appeal filed an Order stating as follows:

> "Appellants' emergency motion to file supplement to petition for rehearing with suggestion for rehearing en banc is Denied." (Appendix "B")

If this is not total indifference to justice, then petitioners are nothing in the eyes of the court.

II The law controlling judgments void for a lack of jurisdiction is clearly set forth in California law to wit: *Los Angeles v Morgan* (1951) 105 Cal App 2d 726, 732, "Where an action has equitable relief from a void judgment as its objective, the statute of limitations and laches may not be envoked as a defense." and *Estate of Poder* (1969) 274 Cal App 2d 786, 790, "Statutes of limitations do not protect a void judgment."

Further, and in accord with *Donegan v Los Angeles*, (1930) 109 Cal App 673, 683, 203 P 912; *Archer v Superior Court* (1927) 81 Cal App 742, 745, 254 P 939; *Security Ins. Co. v Superior Court* (1925) 71 Cal App 701, 704, 236 P 335, "Even though a void judgment is affirmed on appeal, it is not thereby rendered valid..."

Petitioners are entitled to the

protection of these laws, and in accord with *Peques v Morehouse Parish School Bd.*, (C.A. La 1980) 632 F 2d 1279, "In actions under section 1983, the applicable statute of limitations is that which the state would apply if the suit had been brought in its courts.", and in accord with *Kirk v Cronvich*, (C.A. La 1980) 629 F 2d 404, "In actions brought under section 1983, federal courts look to most analogous state statute of limitations."

In accord with *Major v Arizona State Prison*, (C.A. Ariz 1981) 642 F 2d 311, "Since section 1983 does not itself contain limitations period, federal courts look to state statute of limitations that applies to most similar state cause of action; applicable state rule of law may be disregarded only if state law is inconsistent with Constitution and laws of

the United States."

In accord with *Prostor v Flex* (C.A. La 1978) 567 F 2d 635; *Kissinger v Foti* (C.A. La 1977) 544 F 2d 1257; *Polite v Diehl* (C.A. Pa 1974) 507 F 2d 119; *Garner v Stephens* (C.A. Ky 1972) 460 F 2d 1144; *Harrision v Wright* (C.A. Tenn. 1972) 457 F 2d 793; *Savage v U.S.* (C.A. Minn. 1971) 450 F 2d 449; *Glasscoe v Howell* (C.A. Ark 1970) 431 F 2d 863; *Crosswhite v Brown* (C.A. Okl. 1970) 424 F 2d 495; *Knowles v Carson* (C.A. Fla 1969) 419 F 2d 369; "Since section 1983 contains no statute of limitations of its own governing civil rights actions, federal court will look to period of limitations which a court of state in which federal court is located would apply had an action seeking similar relief been brought in that forum."

Since California law specifically

prohibits the application of laches and/or statutes of limitations to void judgments, so then is complaint herein not barred by statutes of limitations or laches.

Further, and as the record and briefs hereto demonstrate, and subsequent to Angel I and prior to Angel II, Angels pursued the issue of presented herein in State Courts, and there is substantial and considerable law requiring state remedy be exhausted as to any issue before pursuing Federal remedy.

In accord with *Board of Regents v Tomanio* 446 U.S. 478, 486-87, 100 S. Ct. 1790, 1797-97, 64 L. Ed. 2d 440 (1980) and *Conerly v Westinghouse Elec. Corp.* 623 F 2d 117, 119 (9th Cir. 1980), "The court has also indicated that state law doctrines allowing for tolling may be applicable to section 1983 actions."

In accord with *Jones v Tracy School Dist.*, 27 Cal 3d 99, 108, 165 Cal Rptr 100, 104, 611 P 2d 441, 445 (1980) citing *Elkins v Derby*, 12 Cal 3d 410, 115 Cal Rptr 641, 525 P 2d 81 (1974), "Under California's equitable tolling doctrine, the prior pursuit of a federal remedy may toll the state statute of limitations when a person has "several formal legal remedies and reasonably and in good faith pursues one."

The vast majority of civil litigation ends in settlement, and thereto rights in settlement must be ever protected.

Invoking the Doctrine of Res Judicata to Circumvent that law specifically prohibiting the application of limitations and laches to judgments void for a lack of jurisdiction renders such specific law useless and meaningless, and those who

would rely on such law, fools.

If one law takes away what another law affords, the result can only be optional justice. This can not be due process or equal protection under the law.

In accord with *De la Vigne v Department of Motor Vehicles* (1969) 272 Cal App 2d 820, "A void judgment is one of no validety, or effect, unenforceable and of no legal force." Application of laches and limitations as prescribed under the Doctrine of Res Judicata can well give validity, effect and legal force to judgments void for a lack of jurisdiction.

Indeed, the wrong herein remains enforceable,and continues effective, and does multiply daily via interest exceeding already $300,000.00.

Without exception, all law places great significance on remedy from judgments void

for a lack of jurisdiction. The Application of laches and limitations under the Doctrine of Res Judicata to judgments void for a lack of jurisdiction is entirely inconsistent with such law. Determination on the merits of the issue of judgments void for a lack of jurisdiction is mandatory under the law.

III Although the underlying facts of Angel I and Angel II are, in part, identical, the issues are entirely different.

The only issue presented as against Froehlich in Angel I was falsification of public record, i.e., reporter's transcript and is set forth in such complaint as follows:

Footnote: Angel I refers to prior Federal Case and Angel II refers to instant Federal Case

> "This matter involves the falsification of public record, i.e., the court reporter's transcript of hearings and trials. Four San Diego North County Superior Court Judges Charles W. Froehlich Jr., F.V. Lopardo, Gilbert Nares and Don Martinson directed the falsification of Court record in a substantial and detrimental way against Angels." (Clerk's Record, Request for Judicial Notice in Support of Defendant's Motion to Dismiss dated 4/5/91, Tab I, page 1, lines 25 thru 28 and page 2, lines 1 & 2)

A determination on the merits of the issue presented against Froehlich in Angel I by the appeal court does not constitute a determination on the merits of Angel II, wherein the sole issue, and entirely different issue, is Froehlich's lack of jurisdiction to make the terms of settlement N 8598 in known opposition to Angels wishes, and such issue is set forth in such complaint as follows:

> "This matter involves defendant's making the terms of settlement N8598 in known opposition to

> Angels specific direction and such action was taken in the presence of opposition counsel while Angels were not in court." (Clerk's Record, Complaint for Permanent Injunction, page 1, Section III)

In Angel I, the appeal court stated in memorandum of decision, C.A. No. 87-5965, as follows:

> "Judicial immunity serves to insulate the defendants from this suit. As pointed out in Ashelman v Pope, 793 F 2d 1072, 1078 (9th Cir. 1986) (en banc), this court must not "construe the immunity doctrines too narrowly by focusing on underlying actions, instead of looking to the ultimate facts." So considered the "ultimate acts" as alleged by appellants neither show nor can show "that the judges' ultimate actions were not judicial or beyond the scope of the court's jurisdiction ..." To the contrary, all are well within the contours of the "Paradigmatic judicial acts involved in resolving disputes between parties who have invoked the jurisdiction of a court." (Clerks Record, Request for Judicial Notice in support of defendant's Motion to Dismiss dated 4/5/91, Tab 5)

In Angel I, the Appeal Court limited their determination on the merits to the issue as alleged, being falsification of public record, i.e., the court reporter's transcript of hearings and trials.

In Memorandum of decision, the Appeal Court states in the instant appeal as follows:

> "Angels argue that res judicata is inapplicable because Angel I was dismissed for lack of subject matter jurisdiction and does not represent a judgment on the merits. A panel of this court, however, affirmed the judgment, not on the grounds of lack of jurisdiction, but because judicial immunity sheilds judge Froehlich from liability. Angel I, No. 87-5965 at 2. This ground for dismissal is not jurisdictional, and the Angel I judgment as affirmed by this court therefore represents an adjudication on the merits. See Fed. R. Civ. P. 41(b) (involuntary dismissal is a judgment on the merits unless based on lack of jurisdiction, improper venue, or failure to join a party under Rule 19). Under the doctrine of res judicata, this court's ruling in

> Angel I precludes the claims raised in Angel II ...." (Appendix "D")

Since the issues were entirely different, the Appeal Courts adjudication on the merits of the issue presented in Angel I does not constitute an adjudication on the merits of the issue presented in Angel II.

Also, in memorandum of decision, the court of appeals mistates the authority upon which they rely, being *Allen v McCurry*, 449 U.S. 90, 94 (1980) (citing *Cromwell v County of Sac.* 94 U.S., 351, 352 (1876)) stated as follows: "Under res judicata, a final judgment on the merits of an action precludes the parties or their privies from litigating [the actual word in the actual case is relitigating not litigating] issues that were or could have been raised in that action."

The word relitigating, as used herein

substantially changes the meaning within the authority relied upon by the court of appeal. Laches aside, prohibition under the doctrine of Res Judicata is on relitigation of issues, meaning that both the presentation of the issue and the determination of the issue is required. An issue presented, but not determined does not qualify as relitigation under the Doctrine of Res Judicata. In any case, the issue of Angel II is nowhere presented in Angel I and is nowhere determined in Angel I

Also in authority relied upon by the court of appeals, i.e., *Allen v McCurry*, supra, (citing *Montana v United States*, 440 U.S. 147, 153) states, "Under collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment that decision may preclude relitigation of the issue in a suit on a

different cause of action involving a party to the first case." The issue of judgment N8598 being void for a lack of defendants jurisdiction to make terms of settlement therein in known opposition to specific direction, etc. was not an issue presented under law nor determined in Angel I

In accord with *Berkman v Ann Leuis Shops, Inc.*, (C.A. NY 1957) 246 F 2d 44, "Judgment of court of another state is entitled to such full faith and credit in every court within United States as it has by law or usage in state in which it was rendered: but, in suit upon such judgment, jurisdicition of court which rendered it is still open to judicial inquiry, and, when matter of fact or law on which jurisdicition depends was not litigated in original suit, it is matter to be adjudicated in suit found upon judgment."

If this law holds for courts of different states, such law must hold from decision to decision within the same federal court of appeal.

In memorandum of decision, the court of appeals states:

> "To the extent any new issues are involved in this action, they could have been raised in Angel I inasmuch as identical facts form the basis of the two complaints." (Appendix "D-3")

The only issue presented in Angel II is that Judgment/Settlement N 8598 is void for a lack of jurisdiction, and such issue, prior to Angel I, had not been presented in State Courts (Statement of case, supra), and laches do not apply to judgments void for a lack of jurisdiction (Argument II supra)

However, it is clear on the face of memorandum of decision herein that the court of appeals is uncertain as to what

issue is presented herein, and whether or not, whatever that issue might be, that it was or wasn't presented in Angel I.

In accord with Federal Rules of Civil Procedure Rule 8, 8(c) 28 USCA and *Travelers Indem. Co. v Arbogast*, 45 FRD 87, "Where reasonable doubt exist as to what was decided by prior judgment, doubt should be resolved against granting of motion to dismiss."

Lastly, what issue in law is substantially the same or almost identical to the issue of judgments being void for a lack of jurisdiction?

For all the foregoing reasons, petitioners request justice, i.e., that decisions of the court below be reversed.

Oct 12, 1992

Respectfully submitted,

Thomas R. Angel

Thomas R. Angel
Petitioner pro se

Loretta C. Angel

Loretta C. Angel
Petitioner pro se

Appendix A-1

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

AUG 10 1992

CATHY A CATTERSON, CLERK
U.S. COURT OF APPEALS

THOMAS R. ANGEL; LORETTA C. ANGEL, Plaintiffs-Appellants, v. JUDGE CHARLES W. FROEHLICH, JR., Defendant-Appellee.	No. 91-55952 DC No. CV-91-0238-B ORDER

Before: D.W. NELSON, BOOCHEVER, and BRUNETTI, Circuit Judges.

The panel has voted to deny the petition for rehearing. Judges Nelson and Brunetti reject the suggestion for rehearing en banc and Judge Boochever so recommends.

Appendix A-2

The full court has been advised of the suggestion for rehearing en banc and no active judge has requested a vote on whether to rehear the matter en banc. (Fed. R. App. P. 35.)

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

Appendix B

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JUL 31 1992

CATHY A CATTERSON, CLERK
U.S. COURT OF APPEALS

THOMAS R. ANGEL; LORETTA C. ANGEL, Plaintiffs-Appellants,	No. 91-55952
v.	DC No. CV-91-0238-B
JUDGE CHARLES W. FROEHLICH, JR., Defendant-Appellee.	ORDER

Before: D.W. NELSON, BOOCHEVER, and BRUNETTI, Circuit Judges.

Appellants' emergency motion to file supplement to petition for rehearing with suggestion for rehearing en banc is DENIED.

Appendix C

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JUL 17 1992

CATHY A CATTERSON, CLERK
U.S. COURT OF APPEALS

THOMAS R. ANGEL; LORETTA C. ANGEL, Plaintiffs-Appellants,	No. 91-55952
v.	DC No. CV-91-0238-B
JUDGE CHARLES W. FROEHLICH, JR., Defendant-Appellee.	ORDER

Before: D.W. NELSON, BOOCHEVER, and BRUNETTI, Circuit Judges.

The Angels' "Motion to Reverse the Order Denying Ex Parte Motion to Correct Record on Appeal," which we treat as a motion to correct the record under Fed. R. App. P. 10(e), is denied as moot, inasmuch as their action is barred by the doctrine of res judicata.

Appendix D-1

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JUN 12 1992

CATHY A CATTERSON, CLERK
U.S. COURT OF APPEALS

THOMAS R. ANGEL; LORETTA C. ANGEL, Plaintiffs-Appellants,	No. 91-55952
v.	DC No. CV-91-0238-B
JUDGE CHARLES W. FROEHLICH, JR., Defendant-Appellee.	MEMORANDUM*

Appeal from the United States District Court for the Southern District of California
Rudi M. Brewster, District Judge, Presiding

Submitted June 3, 1992**
Pasadena, California

---

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Cir. R. 36-3.

** The panel unanimously finds this case suitable for submission without oral argument pursuant to Fed. R. App. P. 34(a), and Ninth Cir. R. 34-4.

Before: D.W. NELSON, BOOCHEVER, and BRUNETTI, Circuit Judges.

This pro se appeal by the Angels of the dismissal of their suit against Judge Froehlich (Angel II) repeats their 1988 federal court appeal in a substantially identical suit against Froehlich and other judges. Angel v. Froehlich, No. 87-5965 (9th Cir. Jan. 14, 1988), cert. denied, 485 U.S. 984 (1988) (Angel I). In both suits the Angels sought injunctive relief against a California Superior Court judge based on the judge's alleged due process violations in the Angels' 1978 lawsuit to compel specific performance of a land sale contract. Before their recent forays into federal court, the Angels had repeatedly and unsuccessfully sought relief arising from the same incident in state court.

The district court dismissed the

instant case on the basis of the res judicata effect of the prior federal court judgment in Angel I. Under the doctrine of res judicata, a final judgment on the merits precludes the parties from litigating issues that were or could have been raised in the prior action. Allen v. McCurry, 449 U.S. 90, 94 (1980) (citing Cromwell v. County of Sac, 94 U.S. 351, 352 (1876)). The Angels and Judge Froehlich were parties to Angel I. The complaint in Angel II raises substantially identical issues as the complaint in Angel I. To the extent any new issues are involved in this action, they could have been raised in Angel I inasmuch as identical facts form the basis of the two complaints.

The Angels argue that res judicata is inapplicable because Angel I was dismissed

for lack of subject matter jurisdiction and does not represent a judgment on the merits. A panel of this court, however, affirmed the judgment not on the grounds of lack of jurisdiction, but because judicial immunity shields Judge Froehlich from liability. Angel I, No. 87-5965 at 2. This ground for dismissal is not jurisdictional, and the Angel I judgment as affirmed by this court therefore represents an adjudication on the merits. See Fed. R. Civ. P. 41(b) (involuntary dismissal is a judgment on the merits unless based on lack of jurisdiction, improper venue, or failure to join a party under Rule 19). Under the doctrine of res judicata, this court's ruling in Angel I precludes the claims raised in Angel II, and the district court properly dismissed the complaint.

This lawsuit is the Angels' seventh attempt to obtain relief in the state and federal courts for the same alleged wrong. It is time for these lawsuits to stop. We have authority under Fed. R. App. P. 38 to impose sanctions on parties, including pro se litigants, to deter frivolous appeals such as this. The result here, as in the district court, is a forgone conclusion, as the Angels' arguments wholly lack merit. See In re Becraft, 885 F.2d 547, 548 (9th Cir. 1989). We therefore grant Judge Froehlich's request for attorney's fees in the amount of $1,020 and double costs to be determined upon the filing of a bill of costs.

AFFIRMED.

Appendix E

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAY 11 1992

CATHY A CATTERSON, CLERK
U.S. COURT OF APPEALS

THOMAS R. ANGEL, et al.	
Plaintiffs/ Appellants,	CA No. 91-55952
v.	DC No. CV-91-0238-RMB SOUTHERN CALIFORNIA
JUDGE CHARLES W. FROEHLICH, JR.	
Defendant/ Appellee.	ORDER

Appellants' request for oral argument is DENIED. This case shall stand submitted on the briefs and record, without oral argument, on June 3, 1992, in Pasadena.

By Direction of the Court

CATHY A. CATTERSON
Clerk of Court
Signed//
Donna Dear
Deputy Clerk

Appendix F

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

NOV 27 1991

CATHY A CATTERSON, CLERK
U.S. COURT OF APPEALS

THOMAS R. ANGEL, et al., Plaintiffs/ Appellants,	No. 91-55952
vs.	DC # CV-91-0238-B SOUTHERN CALIFORNIA
JUDGE CHARLES W. FROEHLICH, JR., Defendant/ Appellee.	ORDER

Appellee's motion to submit the appeal without oral argument, and any related filings shall be referred for disposition to the panel that considers the merits of the case.

This order is subject to reconsideration by a judge if any objection is filed within ten (10) days of the entry of the order.

For the Court

CATHY A. CATTERSON
Clerk of Court
Signed//
Robert Allen
Deputy Clerk

pro 11.18

Appendix G-1

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

OCT 29 1991

CATHY A CATTERSON, CLERK
U.S. COURT OF APPEALS

THOMAS R. ANGEL, et al.,	)	
Plaintiffs/ Appellants,	)	No. 91-55952
vs.	)	DC # CV-91-0238-RMB
JUDGE CHARLES W. FROEHLICH, JR.,	)	SOUTHERN CALIFORNIA
Defendant/ Appellee.	)	ORDER

The court is in receipt of appellants' opening brief. The opening brief is ordered filed. The answering brief is also ordered filed. The optional reply brief is due 14 days from the entry of this order.

The court is also in receipt of

appellant's "Motion to Reverse the Order Denying Ex Parte Motion to Correct Record on Appeal ...." The motion is construed as a motion to correct the record under Fed. R. App. P. 10(e). Construed as such, the motion and any related filings shall be referred for disposition to the panel that considers the merits of the case.

This order is subject to reconsideration by a judge if any objection is filed within ten (10) days of the entry of the order.

For the Court

CATHY A. CATTERSON
Clerk of Court

Signed//
Lou Pearson
Deputy Clerk

pro 10.21

Appendix H-1

____FILED _____LOGGED
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OCT -9 1991

Signed// Clerk

_✓_FILED _____LOGGED
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OCT -7 1991

Signed// Clerk

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

THOMAS R. ANGEL; LORETTA C. ANGEL, Plaintiffs, Appellants v. JUDGE CHARLES W. FROEHLICH, JR., Defendant, Appellee.	CIV NO. 91-0238-B (IEG) ORDER DENYING EX PARTE MOTION TO CORRECT RECORD ON APPEAL

Upon consideration of plaintiff/Appellants' Motion to Correct Record on Appeal and all of the papers filed in connection therewith, it is hereby ordered:

Plaintiffs/Appellants' Motion to

Correct Record on Appeal is denied. Plaintiffs' motion alleges that the current record is incorrect or incomplete in four respects. These allegations are moot; the record contains all the pleadings the Plaintiffs wish to include in the record on appeal.

1. Defendant's Amended Notice of Motion and Motion to Dismiss and the Amended Points and Authorities in Support of Motion to Dismiss, as filed, are included in the record.

Plaintiffs' first concern is that Defendant's original Notice of Motion and Motion to Dismiss and the Points and Authorities in Support of the Motion to Dismiss are not in the record. The Plaintiffs' declaration here includes a copy of those original papers. Those papers, dated March 20, 1991, however,

should not have been accepted by the clerk as they were not in proper form. It is likely that the clerk meant to check "lodged" instead of "filed."

Amended papers, in proper format, were filed on April 5, 1991. The amended papers included a Topical Index and a Table of Authorities, both of which had been omitted in the earlier papers. Additionally, at least on typographical error was corrected and several argument titles were lengthened.

The amended memorandum of points and authorities was substantively different from the original in two matters. First, a new argument was included, titled "Plaintiffs' Action is Barred by the Principles of Claim and Issue Preclusion Because Judgment on Identical Issues Has Been Entered Against Them in this Court"

(page 9). Second, the final paragraph concerning the arguments on the statute of limitations questions contains an alternative conclusion (page 13). Because Plaintiffs later filed papers in opposition to the new argument, they must intend for the complete, amended memorandum of points and authorities to be included in the record, not the original which they request in this motion.

Thus, the original papers which Plaintiffs now request to include in the record will be represented by the amended papers which were properly filed on April 5, 1991 (Docket Sheet # 5 and 6).

2. Plaintiffs' "Answer to Motion to Dismiss" is included in the record under a correct title "Notice of Filing Answer to Motion to Dismiss."

On April 12, 1991, Plaintiffs responded

to the Defendant's motion to dismiss with papers they titled "Answer to Motion to Dismiss." Actually, these papers were an opposition to the motion. Just four days before, however, Plaintiffs had filed their "Opposition to Amended Memorandum of Points and Authorities" which addressed the new argument raised in the amended points and authorities which was not included in the original.

The docket clerk renamed the opposition filed on April 12, 1991, "Notice of Filing Answer to Motion to Dismiss" because the Plaintiffs' title "Answer to Motion to Dismiss" was incorrect and the title "Opposition to Amended Memorandum of Points and Authrities" had already been assigned to the papers filed on April 8, 1991.

Thus, the papers which the Plaintiffs

wish to rename on appeal should retain the name the docket clerk assigned to them, "Notice of Filing Answer to Motion to Dismiss." (Docket Sheet #11).

3. Plaintiffs' "Opposition to Defendant's Reply re: Motion to Dismiss" is included in the record under a correct title "Notice of Filing Opposition to Defendant's Reply re: Motion to Dismiss."

Here, as above, Plaintiffs named a document incorrectly. The document should not have been accepted when the Plaintiffs filed it. To be able to enter it in the docket sheet, the docket clerk assigned to a correct title "Notice of Filing of Opposition to Defendant's Reply re: Motion to Dismiss." On appeal, this document should retain the title assigned by the docket clerk. (Docket Sheet #12).

4. The filing date of Plaintiffs' "Answer

to Motion to Dismiss" (correctly titled "Notice of Filing Answer to Motion to Dismiss" as discussed above) is April 12, 1991.

Plaintiffs provide as an exhibit in the declaration supporting this current motion a copy of the first page of their "Answer to Motion to Dismiss" which is dated April 2, 1991. The "2" has been written in, however, over the stamped date which appears to be April 8, 1991. The original of this paper in the court's permanent file clearly shows the date stamped as April 12, 1991. This is the filing date which should remain on the document on appeal.

Also, it should be noted that the date suggested by Plaintiffs for their "Answer," April 2, 1991, is six days before the amended complaint was filed.

Appendix H-8

Because this amended complaint is the only complaint filed, it would be impossible for Plaintiffs to file a response earlier than April 8, 1991.

IT IS SO ORDERED.

DATED: Oct 4, 1991

Signed//Rudi M. Brewster
UNITED STATES DISTRICT JUDGE

Appendix I-1

FILED

UNITED STATES COURT OF APPEALS

SEP 10 1991

FOR THE NINTH CIRCUIT

CATHY A CATTERSON, CLERK
U.S. COURT OF APPEALS

THOMAS R. ANGEL, et al.,	)	No. 91-55952
Plaintiffs/ Appellants,	)	
	)	DC # CV-91-0238-RMB
vs.	)	Southern California
JUDGE CHARLES W. FROEHLICH, JR.,	)	
Defendant/ Appellee.	)	ORDER

The court is in receipt of appellants' letter dated August 29, 1991 and attached correspondence. Appellants appear to be requesting that the district court record be corrected. Appellants are directed to file a motion to correct the record in the district court. See Fed. R. App. P. 10(e). The clerk shall return appellants'

correspondence along with this order.

Appellants shall file the motion in the district court within 14 days of the entry of this order. This appeal is stayed for 30 days from entry of this order or until the district court rules on the motion to correct the record, whichever occurs earlier. Within 7 days of the expiration of the stay appellants shall file a written status report along with a copy of the district court order, if appropriate. The clerk shall send a copy of this order to the district court clerk.

A new briefing schedule will be established upon appellants' response to this order, if appropriate.

Appellants are reminded that all submissions to this court must be served on opposing counsel and accompanied by a statement of service. Fed. R. App. P.

25(b) and (d).

The clerk shall send a copy of the letter and correspondence to the defendants along with this order.

This order is subject to reconsideration by a judge if any objection is filed within ten (10) days of the entry of the order.

For the Court:
CATHY A. CATTERSON
Clerk of Court

Signed//
Robert Allen
Deputy Clerk

pro 9.2

Appendix J-1

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MAY -2 1991

Signed// Clerk

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APR 29 1991

Signed// Clerk

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

THOMAS R. ANGEL and LORETTA C. ANGEL, Plaintiff, v. JUDGE CHARLES W. FROEHLICH, JR., Defendant.

CIV NO. 91-0238-B (IEG)

ORDER GRANTING MOTION TO DISMISS

Upon consideration of Defendant's Motion to Dismiss, and all of the papers filed in connection therewith, it is hereby ordered:

Defendant's Motion to Dismiss is granted with prejedice. Plaintiffs' Complaint for Permanent Injunction alleges

that Defendant Judge Froehlich lacked jurisdiction to enter judgment in Case No. N 8598, which Plaintiffs filed in the Superior Court of the State of California for the County of San Diego, North County Judicial District. It further alleges that Defendant falsified the transcript of the hearing to conceal the fact that Plaintiffs had not consented to the settlement.

These two arguments - fraud and lack of jurisdiction - have been raised by Plaintiffs and adjudicated on the merits a number of times. Plaintiffs moved to set aside the judgment in Case No. N 8598 on the grounds that the judgment was void for lack of jurisdiction. The motion was denied and appealed unsuccessfully. The California Supreme Court denied Plaintiffs' request for review.

Plaintiffs filed a second lawsuit (Case No. N 14705) to set aside the judgment in Case No. N 8598 alleging fraud and lack of jurisdiction. Summary judgment was entered against them.

In addition to the state court actions, Plaintiffs have pursued their arguments in the federal courts. In November, 1986, Plaintiffs filed a Complaint in the United States District Court for the Southern District of California. The Complaint in Civil No. 86-2270-S (CM) is almost identical to the Complaint filed in the case at bar. The district court granted Defendants' Motion to Dismiss and entered jhudgment against the Plaintiffs. The court found that Plaintiffs had failed to allege a constitutional basis for their claim and that no claim had been stated by operation of the Anti-Injunction Act, 28

U.S.C. § 2283.

Based on the foregoing, the court finds that the issues and claims in the pending suit have been previously adjudicated on the merits and are barred from being relitigated. Thus, Defendant's Motion to Dismiss is granted with prejudice.

IT IS SO ORDERED.

DATED: Stamped//Rudi M. Brewster

Signed//Rudi M. Brewster
UNITED STATES DISTRICT JUDGE

Appendix K-1

Thomas R. Angel and
Loretta C. Angel pro se
Post Office Box 753
Rancho Santa Fe, CA 92067
Phone (619) 634-0369

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Thomas R.Angel and Loretta C. Angel Plaintiffs/ Appellants, -vs- Judge Charles W. Froehlich, Jr., Defendant/ Appellee.	No. 91-55952 DC # CV-91-0238-RMB DECLARATION of THOMAS R. ANGEL and LORETTA C. ANGEL IN OPPOSITION to APPELLEE'S MOTION THAT APPEAL BE SUBMITTED WITHOUT ORAL ARGUMENT

We, Thomas R. Angel and Loretta C. Angel declare: We are plaintiffs/Appellants pro se herein.

Appellants do not concede that they lack standing as to their cause herein. (Appellant's Reply brief, page 4 thru 8) Facts are specifically plead at page 5, line 20 thru 27 and top of page 6, lines 1

& 2 as follows:

> "Besides being buried under a continuing insurmountable Judgment of more than $300,000.00, Angels have lost their right to Appeal N8598 causes one and two and have been denied hearing in any court of N8598 causes three, four and five, and all of this because Froehlich terminated Angels right to contract in settlement N8598 by making the terms of settlement therein, despite Angels attorney having informed him, in the presence of opposition counsel, that such terms were in direct opposition to Angels specific instruction."

Appellants do not concede that their action is barred by issue and claim preclusion. (Appellant's Opening Brief and Reply Brief herein, and specifically appellant's reply brief herein at pages 8 thru 12)

Angels cause herein is meritorious. The issue presented herein, although presented in State Courts, has never been

adjudicated on the merits in any court, State or Federal. (Appellant's Opening Brief and Reply Brief)

The facts and legal arguments are not adequately presented in the record. (Appellants Motion to Correct Record on Appeal) The record as set forth by the District Court is incorrect and misleading.

Further reason exist for oral arguments herein, in that Appellants were not permitted oral arguments in the district court. And specifically set forth in correspondence to the appeals clerk at the district court as follows:

> "I was informed approximately 2 days prior to the scheduled hearing on the Motion to Dismiss that such hearing was taken off calendar, and when I called back several days later to inquire when the Motion to Dismiss would be placed on Calendar for hearing, I was informed there

would be no hearing."
(Appellant's Documents from clerk's record, page 253, second paragraph, second line)

For all the foregoing reasons, Angels request that Appellee's motion that appeal be submitted without oral arguments be denied and that oral argument be permitted herein.

Thomas R. Angel and Loretta C. Angel declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed in Rancho Santa Fe, California on November 11, 1991.

Signed//_____
Thomas R. Angel
Plaintiff/Appellant pro se

Signed//_____
Loretta C. Angel
Plaintiff/Appellant pro se

Appendix L

March 10, 1992

US Court of Appeals
Clerk's Office
P.O. Box 547
San Francisco, Ca. 94101-4909

Dear Clerk,

Re: Civil Appeal No. 91-55952
DC# CV-91-0238-RMB

Would you please inform me as to possibly when there might be a determination of the appeal & related motions herein?

I appreciate your time & consideration.

Sincerely,

Signed// Loretta Angel
P.O. Box 753
Rancho Santa Fe, Ca. 92067

C.C. Donal Hill
1600 Pacific Highway
Suite 355, San Diego, Ca. 92101

Appendix M-1

Loretta C. and Thomas R. Angel
Post Office Box 753
Rancho Santa Fe, Ca. 92067
Phone: (619) 634-0369

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

THOMAS R. ANGEL; LORETTA C. ANGEL, Plaintiffs/ Appellants, -vs- JUDGE CHARLES W. FROEHLICH, JR., Defendant/ Appellee.	USCA No. 91-55952 DC # CV-91-0238-RMB RESPONSE TO COURTS' INQUIRY re: ORAL ARGUMENTS

Defendant herein made motion that Appeal be submitted without oral argument dated November 7, 1991.

Plaintiffs responded via declaration in opposition to such motion. Such declaration is dated November 11, 1991.

The court herein filed an order dated November 27, 1991, stating in relevant part, "Appellee's motion to submit the appeal without oral argument and any related filings shall be referred for disposition to the panel that considers

the merits of the case."

Plaintiffs still hold such objections as set forth in their answer to defendants motion for submission without oral arguments, and incorporate such objections herein as to the courts current inquiry re: Oral Arguments.

Dated: April 10, 1992

Signed//Loretta C. Angel
Appellant pro se

Signed//Thomas R. Angel
Appellant pro se

Appendix N-1

STATEMENT FOR REHEARING EN BANC

En banc consideration is necessary to maintain uniformity of decision and is necessary because this proceeding involves a question of exceptional importance and is necessary because this opinion directly conflicts with existing opinion by other courts of appeal and substantially affects a rule of national application in which there is an over riding need for national uniformity.

Additionally, the order of this court filed October 29, 1991 and setting forth as follows ["The court is also in receipt of Appellant's "Motion to Reverse the Order Denying Ex Parte Motion to Correct the record on Appeal ...." The Motion is construed as a motion to correct the record under Fed. R. App. P. 10(e). Construed as such the motion and any

related filings shall be referred for disposition to the panel that considers the merits of the case"] has not been considered or ruled upon. ....

Appendix O-1

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

THOMAS R. ANGEL; LORETTA C. ANGEL, Plaintiffs/ Appellants, -vs- JUDGE CHARLES W. FROEHLICH, JR., Defendant/ Appellee.	USCA 91-55952

EMERGENCY MOTION

Under Circuit Rule 27(3) to file

Supplement to Petition for Rehearing

with Suggestion for Rehearing EN BANC

Re: Order of Circuit Judges, D. W. Nelson, Boochever and Brunetti filed July 17, 1992

Thomas R. Angel and
Loretta C. Angel
Post Office Box 753
Rancho Santa Fe, CA 92067
(619) 634-0369

Appendix O-2

"CIRCUIT RULE 27-3 CERTIFICATE"

Thomas R. Angel and Loretta C. Angel
plaintiffs/appellants pro se
Post Office Box 753
Rancho Santa Fe, California 92067
Phone: (619) 634-0369

Donal M. Hill, Deputy
Attorney for defendant/appellee
1600 Pacific Highway, Room 355
San Diego, California 92101
Phone: (619) 531-5818

Pursuant to Order of the Ninth Circuit filed September 10, 1991 (Copy attached hereto and made a part hereof as Appendix I). Appellants made Ex Parte Motion to Correct Record on Appeal on September 20, 1991 with the United States District Court for the Southern District of California. Such Ex Parte Motion was denied on October 7, 1991 (Copy attached hereto and made a part hereof as Appendix II).

Appellants made Motion to Reverse the Order denying Ex Parte Motion to Correct

Record on Appeal, etc. to the Ninth Circuit on September 19, 1991. The Ninth Circuit made Order filed October 29, 1991, stating "appellant's 'Motion to Reverse the Order denying Ex Parte Motion to Correct Record on Appeal . . .' would be referred for disposition to the panel that considers the merits of the case." (Copy attached hereto and made a part hereof as Appendix III)

As set forth in Appellant's Petition for Rehearing with suggestion for rehearing en banc under the "statement for Rehearing En Banc", the Ninth Circuit made no ruling on appellants Ex Parte Motion to Correct Record on Appeal. Such Petition was dated June 22, 1992. (Such Petition for Rehearing with suggestion for rehearing en banc is made a part hereof by reference)

Judges D. W. Nelson, Boochever and Brunetti made an Order dated July 17, 1992, approximately one month after appellants petition for rehearing, etc., stating that appellants Ex Parte Motion to Correct Record on Appeal is denied as Moot. (A copy of such Order is attached hereto and made a part hereof as Appendix IV)

Appellants have consistently and in good faith pursued obtaining an Accurate Record on Appeal herein and thereto mailed to this court a Supplement to their Petition for Rehearing, etc. dated July 20, 1992. (Such Supplement is made a part hereof by reference) Appellants were informed by Court Clerk Wayne Price on July 23, 1992 that such Supplement was received by the Court and could only be marked received until Appellants made

motion under Federal Rules of Appellant Procedure, Rule 27.

Appellants could not have responded earlier to the Judges' Order of July 17, 1992, and having made the subject Ex Parte Motion to Correct Record, etc. a part of their petition for rehearing, and having a fundamental right to respond to Orders of this Court, and due to the time passed already and prior to the current Order, and because irreparable damage could be done if complete consideration of all issues presented via appellants petition for rehearing is not permitted via appellant's Supplement thereto, Appellants request that their Supplement to Petition for Rehearing, etc. be accepted and filed.

Proof of mail service on the opposition is attached to this Motion.

We declare under penalty of perjury

that the foregoing is true and correct and that this declaration of certification was executed in Rancho Santa Fe, California, on July 24, 1992.

Signed//Thomas R. Angel
Plaintiff/Appellant pro se

Signed//Loretta C. Angel
Plaintiff/Appellant pro se

Thomas R. Angel and Loretta C. Angel
Post Office Box 753
Rancho Santa Fe, California 92067
Telephone: (619) 634-0369
Petitioners/Appellants pro se

IN THE
SUPREME COURT OF THE UNITED STATES

C. A. No 91-55952

DECLARATION OF SERVICE BY MAIL
(C.C.P. 1013(a) and 2015.5)

I, Tom Angel Jr. declare: That I am, and was at the time of service of the papers herein referred to, over the age of eighteen years, and not a party to the action; and I am Residing in the County of San Diego, California, within which county the subject mailing occurred. My Residence address is Post Office Box 753 Rancho Santa Fe, Ca. 92067. I served the following document [Petition for Writ of Certiorari) by placing 3 copies thereof in an envelope addressed as follows:

Donal M. Hill, Deputy
1600 Pacific Highway, Room 355
San Diego, California 92101

I then sealed this envelope and, with the postage thereon fully prepaid, deposited same in the United States mail at Rancho Santa Fe, California, on October ___, 1992.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October ___, 1992.